

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN ASSEMBLY MAY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1436

Introduced by Assembly Member Burke

February 27, 2015

An act to add Section 12300.3 to the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, as amended, Burke. In-home supportive services: authorized representative.

Existing law provides for the In-Home Supportive Services (*IHSS*) program, under which qualified aged, blind, or disabled persons are provided with supportive services in order to permit them to remain in their own homes and avoid institutionalization. Existing law specifies that supportive services include, among other things, domestic services, personal care services, and paramedical services that make it possible for the recipient to establish and maintain an independent living arrangement.

This bill would authorize an applicant for, or recipient of, in-home supportive services to designate an individual to act as his or her authorized representative for purposes of the ~~In-Home Supportive Services~~ *IHSS* program. The bill would define an authorized representative to mean an individual who is ~~appointed~~ *designated* in writing, on a form ~~designed~~ *developed* by the State Department of Social Services, by ~~a competent person who is an applicant for or recipient of in-home supportive services, to act in place or on behalf of~~

~~the applicant or recipient for purposes related to the program, including, but not limited to, accompanying, assisting, or representing the applicant in the application process, or the recipient in directing the services received, as specified: to accompany, assist, and represent the applicant or recipient for specified purposes related to the program. The bill would require the duties to be provided form to specify the responsibilities to be performed by the authorized representative to be specified by the applicant or recipient and would and to provide that those duties the designation may be changed or revoked at any time by the applicant or recipient. The bill would also provide that the authorized representative has a legal the responsibility to act in the client's applicant or recipient's best interest. The bill would exclude certain persons from serving as an authorized representative, including a person who is found to have perpetrated a substantiated report of abuse or neglect against a child or an elder or dependent adult. prohibited from being a provider of services following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program. The bill would require the department, in consultation with specified parties, including representatives of applicants for, and recipients of, services, to develop a form for this purpose, as specified. The bill would require a county to retain the original form that designates an authorized representative in the applicant or recipient's IHSS case file, and to provide copies of the form to the applicant or recipient and to the authorized representative. By creating additional duties for local officials, the bill would impose a state-mandated local program. The bill would authorize the department to implement and administer these provisions through all-county letters or similar instructions until regulations are adopted, and would require the department to, no later than July 1, 2016, adopt emergency regulations.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 12300.3 is added to the Welfare and*
2 *Institutions Code, to read:*

3 12300.3. (a) *For purposes of this section, an “authorized*
4 *representative” means an individual who is designated in writing,*
5 *on a form developed by the department, by an applicant for or*
6 *recipient of in-home supportive services pursuant to this article,*
7 *to accompany, assist, and represent the applicant or recipient for*
8 *purposes related to the program, including, but not limited to, the*
9 *application process, direction of services, and predeterminations*
10 *of eligibility.*

11 (b) *An applicant or recipient may designate an individual to*
12 *act as his or her authorized representative for the purposes*
13 *described in subdivision (a) on a form that does all of the*
14 *following:*

15 (1) *Specifies an effective time period, to be determined by the*
16 *department.*

17 (2) *Specifies the responsibilities to be performed by the*
18 *authorized representative.*

19 (3) *May be revoked or changed by the applicant or recipient at*
20 *any time.*

21 (c) *The authorized representative designation pursuant to this*
22 *section shall not authorize representation for an administrative*
23 *hearing conducted by the department. An applicant or recipient*
24 *shall comply with Section 10950 to designate an authorized*
25 *representative for the purposes of an administrative hearing.*

26 (d) *The authorized representative shall have the responsibility*
27 *to act in the applicant or recipient’s best interest, shall not have*
28 *any other power to act on behalf of the applicant or recipient,*
29 *except as specified in writing pursuant to this section, and shall*
30 *not act in lieu of the applicant or recipient.*

31 (e) (1) *An applicant or recipient who has a legal representative*
32 *with the legal authority to act on behalf of the applicant or*
33 *recipient that includes decisionmaking authority for purposes*
34 *reasonably believed to be related to the program, as described in*
35 *subdivision (a), shall not be required to complete an authorized*
36 *representative form, except for the purpose specified in subdivision*
37 *(g).*

1 (2) A legal representative may designate an authorized
2 representative for the applicant or recipient in accordance with
3 the requirements of this section.

4 (3) For purposes of this subdivision, a legal representative shall
5 include both of the following:

6 (A) A court-appointed guardian or conservator.

7 (B) For an applicant or recipient who is a minor, a parent or
8 other individual determined by the county human services agency
9 to be the legally authorized decisionmaker for the applicant or
10 recipient.

11 (f) (1) The following individuals shall not serve as an authorized
12 representative for an applicant or recipient:

13 (A) An individual who is prevented from being a provider of
14 services pursuant to Section 12305.81.

15 (B) An individual who is prevented from being a provider of
16 services pursuant to Section 12305.87.

17 (2) The prohibitions described in paragraph (1) shall not apply
18 to an individual described in subdivision (e).

19 (g) An authorized representative may sign timesheets or other
20 provider-related documents for in-home supportive services on
21 behalf of the recipient, if specified by the recipient on the
22 authorized representative form. Notwithstanding any other law,
23 an authorized representative who is a provider of services for the
24 recipient may not sign his or her own timesheet on behalf of the
25 recipient unless the authorized representative is an individual
26 specified in subdivision (e). For administrative processing
27 purposes, a legal representative specified in subdivision (e) shall
28 complete an authorized representative form to sign timesheets or
29 other provider-related documents for in-home supportive services
30 on behalf of the recipient.

31 (h) (1) The department, in consultation with the State
32 Department of Health Care Services, the County Welfare Directors
33 Association of California, representatives of applicants for and
34 recipients of services under this article, and representatives of
35 providers of services under this article, shall develop a
36 standardized statewide form and procedures for effectuating the
37 designation of an authorized representative pursuant to this
38 section.

39 (2) The standard agreement form shall include a notification
40 regarding the requirements of this subdivision and a statement

1 *that by signing the agreement, the individual designated as an*
 2 *authorized representative agrees to abide by those requirements.*

3 *(i) When an applicant or recipient designates an authorized*
 4 *representative on the authorized representative form, the county*
 5 *shall retain the original form in the applicant or recipient's*
 6 *in-home supportive services case file. The form may be*
 7 *electronically retained. The county shall provide copies of the form*
 8 *to the applicant or recipient and to the individual designated as*
 9 *the authorized representative.*

10 *(j) (1) Notwithstanding the rulemaking provisions of the*
 11 *Administrative Procedure Act (Chapter 3.5 (commencing with*
 12 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
 13 *Code), the department may implement and administer this section*
 14 *through all-county letters or similar instructions from the*
 15 *department until regulations are adopted. The department shall*
 16 *adopt emergency regulations implementing these provisions no*
 17 *later than July 1, 2016. The department may readopt any*
 18 *emergency regulation authorized by this section that is the same*
 19 *as or substantially equivalent to an emergency regulation*
 20 *previously adopted under this section.*

21 *(2) The initial adoption of emergency regulations pursuant to*
 22 *this section and one readoption of emergency regulations shall be*
 23 *deemed an emergency and necessary for the immediate*
 24 *preservation of the public peace, health, safety, or general welfare.*
 25 *Initial emergency regulations and the one readoption of emergency*
 26 *regulations authorized by this section shall be exempt from review*
 27 *by the Office of Administrative Law. The initial emergency*
 28 *regulations and the one readoption of emergency regulations*
 29 *authorized by this section shall be submitted to the Office of*
 30 *Administrative Law for filing with the Secretary of State, and each*
 31 *shall remain in effect for no more than 180 days, by which time*
 32 *final regulations may be adopted.*

33 *SEC. 2. If the Commission on State Mandates determines that*
 34 *this act contains costs mandated by the state, reimbursement to*
 35 *local agencies and school districts for those costs shall be made*
 36 *pursuant to Part 7 (commencing with Section 17500) of Division*
 37 *4 of Title 2 of the Government Code.*

38 ~~SECTION 1. Section 12300.3 is added to the Welfare and~~
 39 ~~Institutions Code, to read:~~

1 ~~12300.3.—(a) For purposes of this section, an “authorized~~
2 ~~representative” means an individual who is appointed in writing,~~
3 ~~on a form designated by the department, by a competent person~~
4 ~~who is an applicant for or recipient of in-home supportive services~~
5 ~~pursuant to this article, to act in place or on behalf of the applicant~~
6 ~~or recipient for purposes related to the program, including, but not~~
7 ~~limited to, accompanying, assisting, or representing the applicant~~
8 ~~in the application process, or the recipient in directing the services~~
9 ~~received, and in the redetermination of eligibility process.~~

10 ~~(b) (1) An applicant for, or recipient of, services pursuant to~~
11 ~~this article may designate an individual to act as his or her~~
12 ~~authorized representative for purposes of the in-home supportive~~
13 ~~services program.~~

14 ~~(2) (A) The duties to be provided by the authorized~~
15 ~~representative shall be specified by the applicant or recipient and~~
16 ~~may be changed or revoked at any time by the applicant or~~
17 ~~recipient. The authorized representative shall have a legal~~
18 ~~responsibility to act in the client’s best interest.~~

19 ~~(B) Legal documentation of authority to act on behalf of the~~
20 ~~applicant or recipient under state law, including, but not limited~~
21 ~~to, a court order establishing legal guardianship or a valid power~~
22 ~~of attorney to make health care decisions, shall serve in place of~~
23 ~~a written appointment by the applicant or recipient.~~

24 ~~(C) The authorized representative may sign timesheets for~~
25 ~~services rendered on the recipient’s behalf, if specified to do so~~
26 ~~by the recipient. However, an authorized representative who is the~~
27 ~~provider of services for the recipient may not sign his or her own~~
28 ~~timesheet unless one of the following applies:~~

29 ~~(i) The provider is a parent, guardian, or other person having~~
30 ~~legal custody of a minor recipient.~~

31 ~~(ii) The provider is legally authorized to act on behalf of the~~
32 ~~applicant or recipient under state law.~~

33 ~~(3) For purposes of this section, an individual having legal~~
34 ~~authority to act on behalf of an applicant or recipient may also~~
35 ~~specify an individual other than himself or herself to act on behalf~~
36 ~~of the applicant or recipient if that individual elects to do so.~~

37 ~~(4) An individual who is prevented from being a provider of~~
38 ~~services in the program pursuant to Section 12305.86 shall not~~
39 ~~serve as an authorized representative for an applicant or recipient.~~

1 ~~(5) An individual who has been granted an exemption to serve~~
2 ~~as a provider of services pursuant to Section 12305.87 and who is~~
3 ~~not described in clause (i) or (ii) of subparagraph (C) of paragraph~~
4 ~~(2), shall not serve as an authorized representative for an applicant~~
5 ~~or recipient.~~

6 ~~(6) An individual shall not serve as an authorized representative~~
7 ~~if he or she is found to have perpetrated a substantiated report of~~
8 ~~abuse or neglect against a child or an elder or dependent adult.~~

9 ~~(e) (1) The department, in consultation with the State~~
10 ~~Department of Health Care Services, the County Welfare Directors~~
11 ~~Association of California, representatives of applicants for and~~
12 ~~recipients of services under this article, and representatives of~~
13 ~~providers of services under this article, shall develop a standardized~~
14 ~~statewide form and procedures for effectuating the designation of~~
15 ~~an authorized representative pursuant to this section.~~

16 ~~(2) The standard agreement form shall include a notification~~
17 ~~regarding the requirements of this subdivision and a statement that~~
18 ~~by signing the agreement, the individual named as an authorized~~
19 ~~representative agrees to abide by those requirements.~~